

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ASIS INTERNET SERVICES,

No. C-08-1321 EMC

Plaintiff,

v.

**ORDER RE HEARING AND BRIEFING  
SCHEDULE RE STAY**

MEMBER SOURCE MEDIA, LLC,

Defendant.

Previously, the parties submitted a joint letter to the Court addressing the issue as to whether there should be a stay in the instant case pending the resolution of the appeal of *ASIS Internet Services v. Optin Global, Inc.*, No. C-05-5124 JCS (N.D. Cal.). See Docket No. 28 (joint letter). The Court held a hearing on the joint letter and the parties' proposed discovery plan on July 25, 2008. See Docket No. 35 (civil minutes).

At the hearing, the Court stated that it would temporarily stay the case pending the decision of Judge Henderson in *ASIS Internet Services v. Active Response Group, Inc.*, No. C-07-6211 TEH (N.D. Cal.), and, after Judge Henderson ruled, then the Court would decide whether it should stay the case pending the appeal of the *Optin Global* case. In the meantime, the Court allowed for one exception to the stay -- *i.e.*, reasonable third-party discovery for the purpose of preserving evidence.<sup>1</sup> The parties were instructed to meet and confer to discuss the specifics of any contemplated third-

<sup>1</sup> At the hearing, Member Source indicated that its third-party discovery would likely be restricted to Postini (ASIS's spam filter provider) and ASIS's outsource service administrator.

1 party discovery prior to the issuance of such discovery to ensure that it would be reasonable (*e.g.*, in  
2 terms of number, scope, and so forth).

3 On July 30, 2008, Judge Henderson issued his order denying the defendant's motion to  
4 dismiss. In the order, Judge Henderson disagreed with the holding of Judge Spero in the *Optin*  
5 *Global* case and concluded that the allegations in ASIS's amended complaint were sufficient to  
6 establish standing. Thus, the Court must now address the issue of whether there should be a stay of  
7 the instant case pending the *Optin Global* appeal.

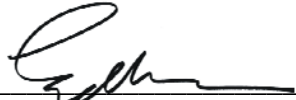
8 Because the issue of a stay is an important one, and because the parties previously submitted  
9 their positions by joint letter only, the Court hereby orders that there be a hearing and full briefing  
10 on the question. The Court shall put the hearing and briefing on an expedited schedule in the  
11 interest of moving the case forward expeditiously.

12 Member Source shall file its motion to stay by August 12, 2008. Any opposition shall be  
13 filed by August 19, 2008, and any reply by August 22, 2008. Courtesy copies shall be provided to  
14 chambers by 4:00 p.m. on each respective date. The hearing on Member Source's motion shall be  
15 held on **August 27, 2008, at 10:30 a.m.**

16 The Court notes that, in deciding the issue, it must, *inter alia*, weigh the parties' competing  
17 interests -- *i.e.*, any possible damage to ASIS which may result from the granting of a stay and any  
18 hardship or inequity which Member Source may suffer in being required to go forward. *See*  
19 *Bechhold v. Bogner*, No. C 07-0870 SBA, 2008 U.S. Dist. LEXIS 6824, at \*4-5 (N.D. Cal. Jan. 17,  
20 2008). The Court advises the parties that they must submit any and all evidence in their possession,  
21 custody, or control to support any claimed hardship.

22  
23 IT IS SO ORDERED.

24  
25 Dated: August 5, 2007

26  
27   
28 EDWARD M. CHEN  
United States Magistrate Judge